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5                   UNITED STATES DISTRICT COURT  
6                   EASTERN DISTRICT OF WASHINGTON

7                   KELLEY JOHNSON,  
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9                   Plaintiff,

10                  v.  
11                  CAROLYN W. COLVIN, Acting  
12                  Commissioner of Social Security,  
13                  Defendant.

NO. CV-12-3060-RHW

**ORDER DENYING DEFENDANT'S  
MOTION TO AMEND OR ALTER  
THE JUDGMENT UNDER FED. R.  
CIV. P. 59(e)**

Before the Court is Defendant's Motion to Amend or Alter the Judgment under Fed. R. Civ. P. 59(e), ECF No. 27. The motion was heard without oral argument.

"[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). It is considered an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Id.* A motion under Rule 59(e) "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Id.* (emphasis in original).

Defendant argues the Court committed clear error in finding the ALJ's credibility decisions were not supported by the record. This argument is a

recasting of the arguments previously presented to the Court and is not an appropriate basis to grant a motion for reconsideration. Defendant's other argument is without merit because the Court did not make a ruling on the issue. Finally, because there were no remaining issues to be resolved once Plaintiff's testimony was credited and the Vocational Expert's testimony was considered, it was not necessary to remand to the ALJ to make a finding at step five.

**Accordingly, IT IS HEREBY ORDERED:**

1. Defendant's Motion to Amend or Alter the Judgment under Fed. R. Civ. P. 59(e), ECF No. 27, is **DENIED**.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order, provide copies to counsel, and close the file.

**DATED** this 13<sup>th</sup> day of March, 2014.

s/Robert H. Whaley

ROBERT H. WHALEY  
United States District Judge

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